

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-1789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation
of Bernard L. Madoff Investment Securities LLC,

Plaintiff,

v.

BANQUE INTERNATIONALE À
LUXEMBOURG S.A. (*f/k/a* Dexia Banque
Internationale à Luxembourg S.A.), individually
and as successor in interest to Dexia Nordic Private
Bank S.A., RBC DEXIA INVESTOR SERVICES
BANK S.A., RBC DEXIA INVESTOR SERVICES
TRUST, RBC DEXIA INVESTOR SERVICES
ESPAÑA S.A. and BANQUE
INTERNATIONALE À LUXEMBOURG
(SUISSE) S.A. (*f/k/a* Dexia Private Bank
(Switzerland) Ltd.),

Defendants.

Adv. Pro. No. 12-1698 (SMB)

**SUPPLEMENTAL REPLY MEMORANDUM OF
BANQUE INTERNATIONALE À LUXEMBOURG S.A. AND
BANQUE INTERNATIONALE À LUXEMBOURG (SUISSE) S.A.**

Defendants Banque Internationale à Luxembourg S.A. ("BIL") and Banque Internationale à Luxembourg (Suisse) S.A. ("BIL Suisse") respectfully submit this supplemental memorandum of law in support of their consolidated motion to dismiss based on extraterritoriality. BIL and BIL Suisse also adopt and incorporate the arguments in the Reply Consolidated Supplemental Memorandum of Law in Support of Transferee Defendants' Motion to Dismiss Based on Extraterritoriality (the "Consolidated Reply").

Relevant Background

BIL is a *société anonyme* organized under the laws of Luxembourg with its principal place of business in Luxembourg. (Compl. ¶ 9.) BIL Suisse is a *société anonyme* organized under the laws of Switzerland with its principal place of business in Zurich, Switzerland. (*Id.* ¶ 15.) Fairfield Sentry Limited ("Fairfield Sentry"), Fairfield Sigma Limited ("Fairfield Sigma") and Kingate Global Fund, Ltd. ("Kingate") are each funds organized under the laws of the British Virgin Islands with registered addresses in the British Virgin Islands. (*Id.* Ex. A ¶¶ 32, 51, Ex. H ¶ 57.) Fairfield Sentry and Kingate each maintained an account with Bernard L. Madoff Investment Securities LLC ("BLMIS"). (*Id.* Ex. A ¶ 33, Ex. H ¶ 59.)

During the two years prior to the collapse of BLMIS, Fairfield Sentry and Kingate withdrew approximately \$1.8 billion from their accounts with BLMIS. (*Id.* ¶¶ 62, 71.) It is alleged that a portion of those funds was subsequently transferred to BIL and BIL Suisse, either directly or indirectly through Fairfield Sigma. (*Id.* ¶¶ 65-66, 74, 83.) In this action, the Trustee of BLMIS is seeking to recover those funds from BIL and BIL Suisse solely as subsequent transferees of Fairfield Sentry, Fairfield Sigma and Kingate. (*See id.* Counts One, Two & Three.) There are no other claims against BIL or BIL Suisse in this action.

Argument

I. CLAIMS AGAINST BIL AND BIL SUISSE SHOULD BE DISMISSED BECAUSE THE ALLEGED SUBSEQUENT TRANSFERS TOOK PLACE OUTSIDE THE UNITED STATES.

The alleged transfers to BIL and BIL Suisse were transfers from British Virgin Islands funds to banks in Luxembourg and Switzerland. They took place outside of the United States. Based on the consolidated Extraterritoriality Decision,¹ such transfers are not subject to the avoidance provisions of the Bankruptcy Code. Accordingly, the subsequent transferee claims against BIL and BIL Suisse (Counts One, Two and Three) should be dismissed.

II. THE TRUSTEE'S PROPOSED AMENDMENTS TO THE COMPLAINT WOULD BE FUTILE.

The Trustee has proffered additional allegations in an attempt to avoid dismissal of the claims against BIL and BIL Suisse. None of the new allegations suggests that the alleged subsequent transfers to BIL and BIL Suisse took place in the United States. For example, one new allegation is that, during the relevant time period, BIL and BIL Suisse were part of the Dexia Group and some Dexia Group companies had operations in the United States. This allegation says nothing about the alleged subsequent transfers to BIL and BIL Suisse. The Trustee also alleges that BIL communicated with a New York based advisor to BLMIS in 2002. Once again, this allegation is irrelevant to the location of subsequent transfers that are alleged to have occurred in 2006, 2007 and 2008. Even if these new allegations were added to the Complaint, the subsequent transferee claims against BIL and BIL Suisse still would be dismissed based on the Extraterritoriality Decision.

In addition to the foregoing, BIL and BIL Suisse adopt and incorporate the arguments in the Consolidated Reply that proposed allegations by the Trustee do not support the inference that

¹ Unless otherwise indicated, capitalized terms in this memorandum of law are defined in the Consolidated Reply.

the alleged transfers were domestic. Specifically relevant to BIL and BIL Suisse are the arguments concerning United States operations of affiliates of the Feeder Funds (Section II.B.2), New York choice of law and venue provisions in Subscription Agreements (Section II.B.3), knowledge that funds would be invested in the United States (Section II.B.4), due diligence (Section II.B.5), use of United States affiliates, agents or offices (Section II.B.6), use of United States bank accounts (Section II.B.7), the general relationship with Feeder Fund's United States office, employees or other representatives (Section II.B.8) and incentive fees (Section II.B.10).

Conclusion

For all the foregoing reasons, the Trustee's claims against BIL and BIL Suisse (Counts One, Two and Three) should be dismissed.

Dated: New York, New York
September 30, 2015

CLIFFORD CHANCE US LLP

by s/ Jeff E. Butler
Jeff E. Butler

31 West 52nd Street
New York, New York 10019
Tel: (212) 878-8000

*Attorneys for Banque Internationale à
Luxembourg S.A. and Banque Internationale à
Luxembourg (Suisse) S.A.*